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NEWS

By Dawn Kopecki

Intelligence Czar Can Waive SEC Rules

Now, the White House's top spymaster can cite national security to exempt businesses from reporting requirements

President George W. Bush has bestowed on his intelligence czar, John Negroponte, broad authority, in the name of national security, to excuse publicly traded companies from their usual accounting and securities-disclosure obligations. Notice of the development came in a brief entry in the Federal Register, dated May 5, 2006, that was opaque to the untrained eye.

Unbeknownst to almost all of Washington and the financial world, Bush and every other President since Jimmy Carter have had the authority to exempt companies working on certain top-secret defense projects from portions of the 1934 Securities Exchange Act. Administration officials told *BusinessWeek* that they believe this is the first time a President has ever delegated the authority to someone outside the Oval Office. It couldn't be immediately determined whether any company has received a waiver under this provision.

The timing of Bush's move is intriguing. On the same day the President signed the memo, Porter Goss resigned as director of the Central Intelligence Agency amid criticism of ineffectiveness and poor morale at the agency. Only six days later, on May 11, *USA Today* reported that the National Security Agency had obtained millions of calling records of ordinary citizens provided by three major U.S. phone companies. Negroponte oversees both the CIA and NSA in his role as the administration's top intelligence official.

FEW ANSWERS. White House spokeswoman Dana M. Perino said the timing of the May 5 Presidential memo had no significance. "There was nothing specific that prompted this memo," Perino said.

In addition to refusing to explain why Bush decided to delegate this authority to Negroponte, the White House declined to say whether Bush or any other President has ever exercised the authority and allowed a company to avoid standard securities disclosure and accounting requirements. The White House wouldn't comment on whether Negroponte has granted such a waiver, and *BusinessWeek* so far hasn't identified any companies affected by the provision. Negroponte's office did not respond to requests for comment.

Securities-law experts said they were unfamiliar with the May 5 memo and the underlying Presidential authority at issue. John C. Coffee, a securities-law professor at Columbia University, speculated that defense contractors might want to use such an exemption to mask secret assignments for the Pentagon or CIA. "What you might hide is investments: You've spent umpteen million dollars that comes out of your working capital to build a plant in Iraq," which the government wants to keep secret. "That's the kind of scenario that would be plausible," Coffee said.

AUTHORITY GRANTED. William McLucas, the Securities & Exchange Commission's former enforcement chief, suggested that the ability to conceal financial information in the name of national security could lead some companies "to play fast and loose with their numbers." McLucas, a partner at the law firm Wilmer Cutler Pickering Hale & Dorr in Washington, added: "It could be that you have a bunch of books and records out there that no one knows about."

The memo Bush signed on May 5, which was published seven days later in the Federal Register, had the unrevealing title "Assignment of Function Relating to Granting of Authority for Issuance of Certain Directives: Memorandum for the Director of National Intelligence." In the document, Bush addressed Negroponte, saying: "I hereby assign to you the function of the President under section 13(b)(3)(A) of the Securities Exchange Act of 1934, as amended."

A trip to the statute books showed that the amended version of the 1934 act states that "with respect to matters concerning the national security of the United States," the President or the head of an Executive Branch agency may exempt companies from certain critical legal obligations. These obligations include keeping accurate "books, records, and accounts" and maintaining "a system of internal accounting controls sufficient" to ensure the propriety of financial transactions and the preparation of financial statements in compliance with "generally accepted accounting principles."

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Review: This is unbelievable rationalization. To what end are all these choices being mad? Slowly our freedoms are being chipped away and we stand there accepting it, rationalizing it as being okay. As wrong as this is, we are partly responsible for letting it happen and allowing other such rationalization/repression fall through. It's our tax dollars supporting such agencies, yet WE cannot be informed of what they do, how they do it, because it's not our interest not to know for our "national security." Socialism preached the same message. Betterment of all man of all as the reason for their actions, no one ever questioned how they knew what each and every person wanted, and who suffered or didn't get what they wanted.

Date reviewed: Dec 18, 2008 2:53 PM

Nickname: Sparky

Review: Boy, talk about a very slippery slope! So much for the accounting doctrine of "full disclosure!" And just how are these temporarily cooked books ever supposed to be subsequently reconciled - you know, as in Trial Balance? And what about the SEC's prime function of protecting investors against fraud and deceit? And last, but certainly not least, if an unknown number of tax dollars can be spent but simultaneously concealed, what about the issue of "taxation without representation?"

Date reviewed: May 31, 2007 10:21 PM

Nickname: Finnbar

Review: It just keeps coming, doesn't it? What's next? Work for the government, get a free pass on killing? Oh, sorry. That's already here. wintersteel.com/RobertDuncanOFinioan.html



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